

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

CITY OF ISSAQUAH, a municipal corporation,

Plaintiff,

v.

ORA TALUS 90, LLC, a Delaware limited liability
company; and RESMARK EQUITY PARTNERS,
LLC, a Delaware limited liability company,

Defendants.

ORA TALUS 90, LLC, a Delaware limited liability
company; and RESMARK EQUITY PARTNERS,
LLC, a Delaware limited liability company,

Third-Party Plaintiffs,

v.

TERRA TALUS LLC, a Washington limited liability
company; ELEMENT RESIDENTIAL INC., a
Washington corporation; JOSHUA FREED, an
individual; J.R. HAYES & SONS, INC., a
Washington corporation; TERRA ASSOCIATES,
INC., a Washington corporation; TALUS
MANAGEMENT SERVICES LLC, a Washington

NO. 18-CV-00910- RSM

TERRA TALUS LLC, ELEMENT RESIDENTIAL
INC., AND JOSHUA FREED'S ANSWER TO
ORA TALUS 90, LLC AND RESMARK EQUITY
PARTNERS, LLC'S FIRST AMENDED THIRD
PARTY COMPLAINT

TERRA TALUS LLC, ELEMENT RESIDENTIAL INC., AND JOSHUA
FREED'S ANSWER TO ORA TALUS 90, LLC AND RESMARK EQUITY
PARTNERS, LLC'S FIRST AMENDED THIRD PARTY COMPLAINT - 1

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1 limited liability company; and TALUS 7&8
2 INVESTMENT, LLC, a Washington limited
3 liability company,

4 Third-Party Defendants.

5 Third-Party Defendants Terra Talus LLC, Element Residential Inc., and Joshua Freed
6 (collectively "Element") answer the allegations contained in the First Amended Third Party
7 Complaint for Contractual Indemnity, Implied Indemnity; Common Law Indemnity; and
8 Negligent Damage to Property ("3rd Party Complaint") of Third Party Plaintiffs Ora Talus 90
9 LLC and Resmark Equity Partners LLC (collectively "Resmark") as follows:
10

11 **ANSWER TO JURISDICTION AND VENUE**

12 1. Element admits the allegations contained in paragraph 1 of the 3rd Party
13 Complaint.

14 2. Element admits the allegation contained in paragraph 2 of the 3rd Party
15 Complaint that venue is property in the District Court for the Western District of Washington.
16

17 **ANSWER TO PARTIES**

18 3. Element is without knowledge concerning the allegations contained in
19 paragraph 3 of 3rd Party Complaint and therefore denies the same.
20

21 4. Element admits the allegations contained in paragraphs 4, 5, and 6 of 3rd Party
22 Complaint.

23 5. Element is without knowledge concerning the allegations contained in
24 paragraphs 7, 8, 9, and 10 of 3rd Party Complaint and therefore denies the same.
25

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ANSWER TO GENERAL ALLEGATIONS

6. Paragraph 11 of the 3rd Party Complaint appears to be a characterization and/or summary of the City of Issaquah's ("City") cause of action against Resmark in the Complaint filed in this case, and entails legal conclusions to which no response is required. To the extent a response is required, Element admits the City filed suit against Resmark to recover damages allegedly caused to the City's infrastructure and certain water facilities due to a landslide in 2015 based on the legal theory of negligence. Element also admit that Resmark attached a copy of the City's Complaint to its 3rd Party Complaint.

7. Paragraph 12 of the 3rd Party Complaint appears to be a summary and/or characterization of the nature of Resmark's Answer to the Complaint, which speaks for itself and to which no response is required. To the extent an answer is required, Element admits that Resmark denies that its acts and admissions caused damages to the City's property or breached duties (if any) owed to the City. Element also admits that the City's own actions and failures to act caused or contributed, in whole or in substantial part, to the landslide. Element further admits that Resmark attached a copy of its Amended Answer to the Complaint and Counterclaims to their 3rd Party Complaint.

8. In response to the allegations contained in paragraph 13 of the 3rd Party Complaint, Element denies that it proximately caused any alleged damage to the City. Rather, the City's damages (if any) were proximately caused by its own acts and/or omissions. Alternatively, the City's damages were caused by the acts of Resmark or of the other Third-Party Defendants (J.R. Hayes & Sons, Inc., Terra Associates, Inc., Talus Management Services

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1 LLC, and Talus 7 & 8, LLC). Element denies all other allegations contained within paragraph 13
2 of the 3rd Party Complaint.

3 9. Element denies the allegations contained in paragraph 14 of the 3rd Party
4 Complaint as they pertain to Element. Element is without information concerning the
5 remaining allegations contained in paragraph 14 of the 3rd Party Complaint and therefore
6 denies them.
7

8 10. Upon information and belief, Element admits the allegations contained in
9 paragraph 15 of the 3rd Party Complaint.
10

11 11. Element admits the allegations contained in paragraph 16 of the 3rd Party
12 Complaint.
13

14 12. Upon information and belief, Element admits that in 1998 and 1999, the City
15 caused an environmental review to be conducted on the parcels in the Talus Master Planned
16 Development as alleged in paragraph 17 of the 3rd Party Complaint. Element is without
17 information concerning the remaining allegations contained in paragraph 17 of the 3rd Party
18 Complaint and denies the same.

19 13. Element admits the allegation in paragraph 18 of the 3rd Party Complaint that
20 the City entered into a Development Agreement with respect to the Talus Master Planned
21 Development. Element is without sufficient information concerning the remaining allegations
22 contained in paragraph 18 of the 3rd Party complaint and denies the same.
23

24 14. Element is without sufficient information concerning the allegations contained
25 in paragraphs 19, 20, and 21 of the 3rd Party Complaint and denies the same.

1 15. Element admits the allegation contained in paragraph 22 of the 3rd Party
2 Complaint that Terra Associates prepared a Critical Area Report ("CAR") for Parcel 9. The
3 remainder of paragraph 22 of the 3rd party Complaint purports to characterize and/or
4 summarize the contents of said CAR, which speaks for itself, and to which no response is
5 required. To the extent a response is required, Element lacks sufficient knowledge to form a
6 belief as to the remaining allegations contained in paragraph 22 of the 3rd Amended
7 Complaint and denies the same.
8

9 16. Element admits the allegations contained in paragraph 23 of the 3rd Amended
10 Complaint.
11

12 17. Element admits the allegations contained in the first sentence of paragraph 24
13 of the 3rd Amended Complaint. The agreement referenced in paragraph 24 of the 3rd
14 Amended Complaint speaks for itself, and no response to the allegations concerning the
15 agreement is required.
16

17 18. Element admits the allegations contained in the first sentence of paragraph 25
18 of the 3rd Amended Complaint. Element lacks sufficient knowledge concerning the remaining
19 allegations contained in paragraph 25 of the 3rd Party Complaint and denies the same.
20

21 19. Element lacks sufficient information concerning the allegations contained in
22 paragraph 26 of the 3rd Party Complaint and denies the same.

23 20. Element admits the allegations contained in paragraphs 27, 28, and 29 of the
24 3rd Party Complaint.
25

1 21. Paragraphs 30, 31, 32, 33, and 34 of the 3rd Party Complaint purport to
2 characterize and/or summarize the contents of the Terra Talus Agreement, which speaks for
3 itself and to which no response is required. To the extent a response is required, Element
4 denies the allegations contained in paragraphs 30, 31, 32, 33, and 34 of the 3rd Party
5 Complaint.
6

7 22. Element admits the allegation contained in the first sentence of paragraph 35
8 of the 3rd Party Complaint. The remainder of paragraph 35 of the 3rd Party Complaint purports
9 to characterize and/or summarize the contents of the Guaranty, which speaks for itself and to
10 which no response is required. To the extent a response is required, Element denies the
11 allegations contain in paragraph 35 of the 3rd Party Complaint.
12

13 23. Element admits the allegation contained in paragraph 36 of the 3rd Party
14 Complaint that J.R. Hayes agreed to perform certain Infrastructure, grading, and site work on
15 Talus Parcel 9. The remainder of paragraph 36 of the 3rd Party Complaint purports to
16 characterize and/or summarize certain contractual provisions in the JR Hayes Agreement,
17 which speak for themselves and to which no response is required. To the extent a response is
18 required, Element denies the allegations contain in paragraph 36 of the 3rd Party Complaint.
19
20

21 24. Element admits the allegation contained in paragraph 37 of the 3rd Party
22 Complaint that the construction and grading began on Talus Parcel 9 in approximately
23 September 2015, and that J.R. Hayes performed the construction and grading. Element is
24 without sufficient information concerning the remaining allegations contained in paragraph
25 37 of the 3rd Party Complaint and denies the same.

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1 25. Based upon information and belief, Element admits the allegations contained
2 in paragraphs 39, 40, 41, 42, 43, 44, and 45 of the 3rd Party Complaint.

3 26. Element admits the allegation in paragraph 46 of the 3rd Party Complaint that,
4 in January 2016, the City excavated the top of the slope and revealed a broken 8 inch
5 diameter water main pipe with a loose end cap and a blow-off valve leak. The remaining
6 allegations contained in paragraph 46 of the 3rd Party Complaint purport to characterize
7 and/or summarize Resmark's Amended Answer and Counterclaims, which speak for itself and
8 to which no response is required. To the extent a response is required, Element admits that
9 discharge from City-owned water infrastructure caused the Landslide.
10

11 27. Element lacks sufficient information to form a belief regarding the allegations
12 contained in paragraph 47 of the 3rd Party Complaint and denies the same.
13

14 **ANSWER TO FIRST CLAIM FOR RELIEF**

15 28. In response to the allegations contained in paragraph 48 of the 3rd Party
16 Complaint, Element restates and incorporates by reference its responses to the contained in
17 paragraphs 1 through 47 of the 3rd Party Complaint as if fully set forth herein.
18

19 29. Element denies the allegations contained in paragraphs 49 and 50 of the 3rd
20 Party Complaint.
21

22 **ANSWER TO SECOND CLAIM FOR RELIEF**

23 30. In response to the allegations contained in paragraph 51 of the 3rd Party
24 Complaint, Element restates and incorporates by reference its responses to the contained in
25 paragraphs 1 through 50 of the 3rd Party Complaint as if fully set forth herein.

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1 31. Element denies the allegations contained in paragraphs 52 and 53 of the 3rd
2 Party Complaint.

3 **ANSWER TO THIRD CLAIM FOR RELIEF**
4

5 32. In response to the allegations contained in paragraph 54 of the 3rd Party
6 Complaint, Element restates and incorporates by reference its responses to the contained in
7 paragraphs 1 through 53 of the 3rd Party Complaint as if fully set forth herein.

8 33. Element denies the allegations contained in paragraphs 55, 56, 57, and 58 of
9 the 3rd Party Complaint regarding Terra Talus. Element is without sufficient information
10 concerning the remaining allegations in those paragraphs and denies the same.
11

12 **ANSWER TO FOURTH CLAIM FOR RELIEF**
13

14 34. In response to the allegations contained in paragraph 59 of the 3rd Party
15 Complaint, Element restates and incorporates by reference its responses to the contained in
16 paragraphs 1 through 58 of the 3rd Party Complaint as if fully set forth herein.

17 35. Element denies the allegations contained in paragraph 60 of the 3rd Party
18 Complaint regarding Terra Talus. Element is without sufficient information concerning the
19 remaining allegations in paragraph 60 and denies the same.
20

21 36. Element is without sufficient information concerning the allegations contained
22 in paragraphs 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, and 71 of the 3rd Party Complaint and
23 denies the same.
24
25

39. Element denies the allegations contained in paragraph 77 of the 3rd Party Complaint.

II. AFFIRMATIVE DEFENSES

1. Resmark failed to state a claim upon which relief can be granted.
2. Resmark's claims are barred in whole or in part by comparative negligence.
3. Resmark's claims are barred in whole or in part by contributory fault or negligence.

6649004.1

8. Resmark's claims are barred by insurance defense.

9. Resmark's claims are barred by assumption of the risk.

10. Resmark's claims are barred by unclean hands.

11. Resmark's claims are barred by waiver.

ANSWER TO PRAYER FOR RELIEF

WHEREFORE, Element requests the Court to deny Resmark's requested relief in its 3rd Party Complaint as follows:

- A. For dismissal of Resmark's 3rd Party Complaint with prejudice;
- B. For judgment against Resmark for the costs, expenses, and attorney fees incurred in defense of the 3rd Party Complaint in an amount to be determined by the Court;
- C. For an order allowing Element to amend the pleadings to conform to the evidence at trial; and
- D. For such other and further relief as the Court deems just and equitable.

DATED this 29th day of November, 2018.

By: s/ Dean G. von Kallenbach
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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2018 I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification to all recipients.

DATED this 29th day of November, 2018.

s/ Dean G. von Kallenbach

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